

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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RICHARD WILLOUGHBY, :  
Petitioner, :  
: 03 Civ. 3345 (DLC)  
-v- :  
: MEMORANDUM OPINION  
KENNETH S. PERLMAN, : and ORDER  
Respondent. :  
-----X

DENISE COTE, District Judge:

**PROCEDURAL HISTORY**

Richard Willoughby ("Willoughby") filed this petition pro se for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 on May 12, 2003. On June 27, 2003, this Court ordered the respondent to answer the petition and referred the action to Magistrate Judge Maas for the preparation of a Report and Recommendation pursuant to 28 U.S.C. § 636(b). Willoughby was released from state custody on September 25, 2003. On October 28, 2004, Judge Maas issued his Report and Recommendation to this Court.

Willoughby alleges that his constitutional rights were violated when the trial court refused to excuse two jurors, Thomas Butcher ("Butcher") and Thomas Bryson ("Bryson"), for cause. When asked if his prior experience as a juror would affect his ability to be fair in Willoughby's case, Butcher responded that his ability to be fair depended "[o]n what happens when I get into the jury room this time." In response to the same line of questioning, Bryson initially stated that he could "probably" be fair but later explained that "[i]t depends on the

evidence." After further inquiry, he responded, "Okay. I can be fair, okay?" Although the trial court denied Willoughby's challenges for cause, Willoughby removed both Butcher and Bryson from the jury with peremptory challenges.

After examining the merits of each of these claims, Judge Maas recommended that this Court dismiss the petition and deny a certificate of appealability. As indicated by Judge Maas in his Report and pursuant to Rule 72, Fed. R. Civ. P., the petitioner and respondent had ten days in which to file objections to the October 28 Report. No objections by either party were filed.

#### **THE STANDARD**

In reviewing the Report, a reviewing court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b) (1) (C). "To accept the report and recommendation of a magistrate, to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record." Wilds v. United Parcel Serv., 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003) (citing Nelson v. Smith, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985)). See also Pizarro v. Bartlett, 776 F. Supp. 815, 817 (S.D.N.Y. 1991) (court may accept report if it is "not facially erroneous").

## DISCUSSION

Having reviewed the Report, I find no facial errors in it. I, therefore, accept and adopt the Report. The Clerk of Court shall dismiss this petition and close the case. I further accept Judge Maas's recommendation against issuing a certificate of appealability. Willoughby made no objections to the Report, and as the Report having advised him that failure to object will preclude appellate review of this Opinion and Order, he has waived his right to appeal. DeLeon v. Strack, 234 F.3d 84, 86 (2d Cir. 2000).

SO ORDERED:

Dated: New York, New York  
May 17, 2005

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*Denise Cote*  
Denise Cote  
United States District Judge